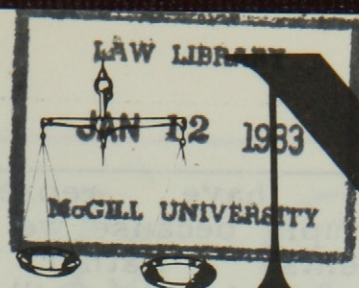


Quid Novi



VOL. III NO. 14

MCGILL UNIVERSITY FACULTY OF LAW
FACULTE DE DROIT UNIVERSITY MCGILL

January 12, 1983
12 janvier, 1983

Prez Cutler's Interview: Part 2

This is the second part of Quid Novi's interview given by LSA president Roger Cutler, with Joseph Rikhof.

QN: Is student representation on Faculty Council merely a façade? For example, in the last meeting of Faculty Council, a student motion was passed. But if you analyze the votes, you might conclude that it was a combination of the students' hard work, and sheer luck, in the sense that some professors left, or didn't even show up, because they did not think that the motion would pass.

Cutler: There probably were professors who did not attend the meeting who would not have come down on the side of the student motion. I'm not suggesting there is a façade. I'm saying that there comes a time when one has to evaluate a situation, although I will say this: I could not think of a more reasonable motion that the student body could put before Faculty Council. Fortunately we convinced 7 professors which was sufficient to show that it was a reasonable motion. I think that the professors had very little to lose on

this motion. Most had to make up four or five classes in November, but they will also have a four-day vacation while we will be studying and preparing for exams.

QN: But again, this motion does not go to the heart of the student-faculty power structure. What do you think would happen in a more extreme case?

Cutler: The result of the last student motion may be that many professors will say that students are recognized on Faculty Council. But recognition of student representation must be more than just passing the odd motion. Student recognition

will only succeed through appropriate student representation on committees, through communication and interaction with the professors. The general attitude of some professors is that students are on a lower echelon. I think we are all adults; some know more about certain subject matters than others, and some may have a little more experience. But there are also students who are a great deal older than some of the professors and who have had a good deal more experience than professors, and who are capable of contributing to the Faculty.

QN: Does the executive of

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Native Peoples and the Law

by Pearl Eliadis

After three years on the drawing board, a course dealing with legal issues affecting native peoples was introduced at our faculty last term. "Native Peoples and the Law" was taught by Mr. Hutchins, who has been extensively involved in the litigation and negotiations resulting from the James Bay Hydro development in Northern Quebec. As a relatively new area of law, the subject of native legal issues was greeted with apprehension from some members of the faculty. In hindsight it appears that the apprehension was unfounded. The

Dean and the Faculty are to be commended for deciding to introduce the course.

The success in instituting the course is owed, in a large measure, to Connie Kilfoil, a fourth-year student already very involved in native law. In the summer of 1980, Kilfoil proposed the idea to Prof. Foster (then the acting Dean). The Curriculum Committee, when subsequently presented with two alternative course possibilities, unanimously approved a native law course in principle. There was, however,

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YOUR WEEKLY SMILE

If the facts are against you, argue the law;
If the law is against you, argue the facts;
If the facts and the law are against you, yell like hell.

Cutler

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the LSA Council have a general policy? For example, are the activities of the various committees tied into a general LSA policy which is implemented by the student members of the committees? For example, the concept of law and law school in a society has a direct impact on what kind of students are admitted, what kind of professors are hired, exam policy, and curriculum. Has the LSA developed this sort of general concept?

Cutler: Because of time constraints, I think that the position of the LSA cannot be too specific. The degree of input that students have in the faculty has to be kept general -- ready to act and react as issues come up. There will be situations where the positions of two committees will be contradictory. We are trying to see what is bothering students, how we can make the law school a better place to learn the law. The door is always open for people who come to meetings to suggest policy. If general policy means that the executive must do the greatest good for the greatest number of people, then we must make this place a better and more productive school in which to spend three or four years. There is no political policy per se. I think that this brings us back to the example of Faculty Council, in that there are many issues which have no effect upon the various professors. For example, the teaching of Torts is decided upon by the professor but every student takes Torts, so why should those students not have a say as to the course credit weight or whether the course should be taught in one or two terms? We do not want

to have representation simply because we are students. Rather, because every decision will have an effect upon students. Why should a professor vote on an issue which does not affect him/her at all?

QN: Do you think a questionnaire would be of any help?

Cutler: When we are asked our opinion about tenure for a certain professor, I can voice my opinion but I haven't checked with the student body. Even if we took it to the General Assembly and it was passed, that a certain professor was not liked by 75% of the student body, I don't think this would be representative. If the professor has been here for 5 years and has taught over 1,000 students, it seems difficult for me to see how we can decide in what might have been an off year. What we are trying to do with the questionnaire is just another form of evaluation, and that would be the position that the LSA would take if the Dean asked.

QN: What effect would this have?

Cutler: We are not told what, if any, weight is given to evaluations. We do know that they are looked at.

QN: Are the LSA officers sufficiently open to student complaints or suggestions?

Cutler: As far as I know, yes. I think that I am approachable. I think the members of the executive are around enough. We have mail boxes, and the LSA office is always there, even if somewhat out of the way, but that allows us to carry on our meetings. I think people feel they can approach us. In addition, the class presidents are fulfilling their functions very well.

INSANITY DEFENCE

by Sidney Fisher

On November 25th, 1982, the Moot Court was the scene of a panel discussion addressing the insanity defense. There were four participants: Mr. Vincent Del Buono, a former McGill professor, now working for the Department of Justice; Me. Michel Proulx, a professor at McGill and a practising criminal defense lawyer; Dr. Joel Paris, a clinical psychiatrist, and the Director of Education at the Jewish General Hospital; and Dr. Bruno Cormier, a forensic psychiatrist at McGill University.

Prof. Sklar opened the discussion by noting the parallels between the insanity defense and those of self-defense, duress, and necessity. In all these situations, the accused is not held to be responsible for his or her actions. However, in the case of the insanity defense, Prof. Sklar said the cause comes from within the person, rather than from without as is true in the other cases. Prof. Sklar noted the revolution taking place in criminal defence law in both Canada and the United States. This rethinking of the insanity defense is primarily a consequence of the Hinkley trial.

The first speaker, Me. Proulx, quoted Judge Rivard as saying that science presents contradictory proof in what is an illogical and ridiculous procedure, and that jurors are not enlightened by the testimony of expert witnesses. Proulx disagreed with the position that jurors are incapable of understanding expert testi-

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Summer Is Coming!

by Craig Wallace
our B.C. correspondent

It was to have been a summer of recuperation. It was much needed. Both body and soul had suffered horribly last winter, at the mercy of a savage climate and inhuman law professors. I survived only on thought of the coming four month mental sabbatical and being confronted with nothing more logistically taxing than keeping the sand out of my suntan oil.

I know of no better way to erase the deleterious effects of a year at McGill Law school than to spend one's summer days lounging by the crashing surf and one's summer nights soaking in a warm jacuzzi with a cold glass of Napa Valley Chablis. It was time to withdraw from the real world, which was, after all, a shambles. The Dodgers were off to a terrible start and there would be no summer re-runs of Charlie's Angels.

To this end I had acquired the most appropriate address I could find: 605 Narcissus Avenue. Four short blocks from the most Californian beach. I would describe it in detail, but the editors cautioned me against such self-indulgence. ("Don't bore us with any more of that crap about hedonism!"). There is just no pleasing some people.

But the summer was off to a rocky start. Beside the usual problems, like building up an even-base tan, I had another: I suddenly found myself romantically unattached. I'm sure I don't know why, but I did. At any rate, being single in

Newport Beach, I wasn't alone.

Now, if you believe the glossy magazines and the real estate agents, you probably believe that the single life in Newport Beach is one dizzy round of pleasure. You might think that all you have to do is don your Dior jogging suit, take to the waterfront, and the opposite gender will follow you home in droves. Perhaps they will if you are Tom Selleck. I seem to collect only muggers and stray dogs.

But being compulsively heterosexual, I find I must date women to satisfy that need for human companionship as only women can. So I find myself, along with many others of my sex, going to greater lengths to meet women. There is no shortage of benevolent enterprises eager to lend a hand; the singles industry in Newport Beach is big business. There are the singles "clubs", whose solicitations arrive daily addressed simply "Southern California Single" or "South Coast Playmate". Catchy titles. I like receiving that sort of mail. It's better than "Dear Occupant" or "Dear Voter" or "Dear Child of God". Those I usually throw away.

But computer dating scares me; I find myself lying about my attributes on the application forms. And what if my potential date misrepresents herself as well? The evening might be a disaster.

So I go to the Red Onion. Here one rubs shoulders (and other parts if the timing is right) with the finest that

Newport Beach has to offer. It is often said that all the glitter of Southern California is just a garnish of phoney tinsel -- strip away that and underneath you find the real tinsel. Well, here at the Red Onion, is the real tinsel.

Perched on the bayfront, the Red Onion discreetly advertises boat slip parking for its waterborne clientele. The streetside customers leave daddy's leased Mercedes or mother's convertible Rabbit in the case of a team of doting valets.

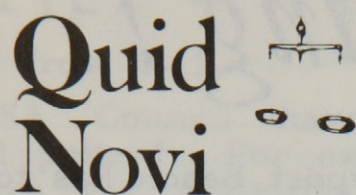
Inside it is packed with young people from the pages of a Ralph Lauren catalogue. There is not a trace of tacky. Everywhere tanned faces attest to many leisurely hours spent at poolside or on the sand. The floor is wall-to-wall-siders and espadrilles. Occasionally a sunburned tourist will wander in and one can almost sense that the natural order is perverted. Polyester and Polo do not mix.

I would be deceiving you if I told you that I go to the Red Onion in search of great wits; I feel lucky if I meet a girl who can read the snack menu without moving her lips. You must remember where you are. Here is a room full of girls who dot their I's with little stars or happy faces and leave notes like "Have a nice day" in lipstick on your mirror the morning after. Lipstick is a bitch to clean off.

So why do I go to the Red Onion? For the same reason, I suppose, that many others

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Quid Novi



Quid Novi is published weekly by students at the Faculty of Law of McGill University. Production is made possible by support of the Dean's office, the Law Students' Association, and by direct funding from the students. Opinions expressed are those of the author only. Contributions are published at the discretion of the editor and must indicate author or origin.

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Quid Novi est une publication hebdomadaire assurée par les étudiants de la faculté de droit de l'université McGill. La publication est rendue possible grâce à l'appui du bureau du doyen, de l'Association des étudiants en droit ainsi que par le financement individuel des étudiants. Les opinions exprimées sont propre à l'auteur. Toute contribution n'est publiée qu'à la discrétion du comité de rédaction et doit indiquer l'auteur ou son origine.

Editorial

At Quid Novi's last meeting in December the staff held elections for a new board. The new appointments are Demetrios Xistris as Editor, Brian Mitchell as Managing Editor, and Paul Mayer as Production Manager. We hope to continue to contribute to the Law School community as effectively as Quid Novi did under Richard Janda's stewardship.

Quid Novi has grown to the point where it has become a dependable source of information for students and faculty alike. We have been able to develop our resources to operate with greater efficiency. Yet we can still use help. For example, this semester we hope to cover issues like tenure, the allocation of the Boulton Fund, the process for selecting a new Dean, and due to Prof. Macdonald's sabbatical, the selection of a new Associate Dean. There is the matter of the LSA's \$10,000 and the decisions which will accompany the new Faculty Review, such as the hiring of new faculty and the possible expansion of the physical plant. Then in March there will be an in-depth view of the LSA elections. Quid Novi hopes to cover these and other issues as they arise. If you are interested in helping out, we meet at 1 p.m. every Monday in the Common Room.

Demetrios Xistris

Insanity

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mony, but added that it is the responsibility of lawyers to make this testimony clear. He stated that there was a need to review the definition of insanity in order to decrease the discrepancy between medical concepts and legal terminology.

The next speaker, Dr. Cormier, stated that faculties of law were deficient in their teaching of law and psychiatry. He felt the real problem lay in the disposition of cases: people found not guilty by reason of insanity are not set free but rather are institutionalized indefinitely. The insanity defense is thus much more complex than a simply defense of "not guilty".

Mr. Del Buono, the third speaker, said the Department of Justice is presently reviewing sixteen possible amendments to the present insanity defense. Some alternatives are to replace

it with a defense of diminished capacity to plead guilty but mentally ill, or to plead the defense of irresistible impulse. Del Buono feels there is no absolutely right answer to the insanity defense, but the Department of Justice must try for the least wrong one.

The last speaker, Dr. Paris, pointed out that the insanity defense caused a problem of "medicalizing" the legal system. He maintained that the plea of not guilty by reason of insanity should be reserved for cases where the accused really did not know what he or she was doing. Guilty but medically ill should apply to people such as Hinkley, who are aware of what they are doing. Paris stated there should be no insanity defense for those with personality disorders -- in his opinion the majority of prisoners -- because they are mostly untreatable. Paris thus hoped for a more limited use of the insanity defense, for he saw no necessary connections between criminality and insanity.

Native People

Cont'd from p. 1

some disagreement amongst the faculty as to the need for such a course. Other courses were also being considered at the time, and scant resources made some faculty members hesitant about introducing a course which many felt was redundant. They believed that many of the concepts were already addressed in such courses as Constitutional and International Law. That opinion, however, did not accurately reflect the situation. As Mr. Hutchins has pointed out, the status of native people defies description by any one system or category of law. In addition, each native group may have unique problems that do not have the same legal solution as may be found for another group. Hence, in each case, a lawyer must draw from virtually every sphere of the western legal system in order to construct a novel and unique legal argument recognizable by our courts.

It was also felt by some that the course was perhaps too esoteric and that there was little practical need for it. In fact, there are about two dozen lawyers in Montreal alone involved in native law.

Whatever the objections, Faculty Council finally decided to implement the course, and Mr. Hutchins received what he described as a "surprise call" from the Dean. "Native Peoples and the Law" would be taught in the fall of 1982. Unfortunately the course had to be scheduled in an awkward time slot, but this did not deter over thirty students from enrolling, virtually all of whom attended regularly throughout the term.

Although the work load of the course was extremely

heavy, many students stated that it had been one of the most rewarding courses in the faculty. The course provided a wonderful opportunity for students to see Canadian history from a startling perspective, and the analogous historical and socio-political situations in Australia, New Zealand, and the United States were also examined. In addition, students were requested to draft legislation, an original and useful approach to assignments in our faculty, which helped students to understand better the need for innovation in native law.

Mr. Hutchins emphasizes that the heavy load of substantive law assigned in the course has a primary objective of allowing students to develop an understanding and an interest for the subject matter, highlighting the specific problems that confront aboriginal peoples today. Special emphasis was placed upon comprehensive land claims, and their role as a possible solution for the difficulties which may face us in the future as lawyers.

In summary, the advent of the Native Law course was a successful conclusion to the efforts of many students and faculty members concerned with this interesting and expanding area of law.

Summer

Cont'd from p. 3

do; it is to prolong being single.

It is easy to be caught up in the "in" factor. Everyone at the Red Onion certainly is. Keeping pace with what is in and what is out is a way of life. German cars are in. Conservatives, finally, are in. Aloe Vera is in. Jazzercise is in. And, of course, being single is in. It is even in to have herpes. (Perhaps it's not actually having herpes that's in, but coping with

it, bringing it out of the closet, so to speak.) Expensive seminars and therapy sessions with titles like "Living with Herpes" are very big this year).

So the people at the Red Onion work hard at being single. Many will tell you that they don't like it, but all are firmly committed to it. Being in a "captial R" relationship is a bad scene. Too much heavy-duty energy involved in sharing your space. Besides, it's too easy to find yourself married and moving to the valley, and it is not in to live in the valley. It is grody.

Some of my female friends tell me that I should grow up and try dating real women for a change; they tell me that the girls at the Red Onion are suffering from extended adolescence and that I am too. It sounds funny coming from them. Many of them, along with their male counterparts, have managed to prolong adolescence by going on to law school. I can't say which I prefer -- you will have to ask me next summer. You can page me at the Red Onion.

Have a nice day.

Book Review

Cont'd from p. 6

If we lived in such a world of perfect or pure competition, the role that law would play would be a minor one. The free market would rule.

However, we do not live in a world of pure competition. Parties are not always equals. The free market does not give us the optimal allocation of resources. Hence, it becomes the role of the law to reshape the imperfect market in order to return again to the optimal distribution of wealth.

LAW AND ECONOMICS

Book Review, part 1: *Law and Economics*, by J.M. Oliver, London, Allen & Unwin, 1979; K11L 0485 (Recent library acquisition).

by Daniel Gogek

American legal minds have long been involved in the combined study of law and economics. J. M. Oliver, Head of Economics at Hatfield Polytechnic, no doubt inspired by this burgeoning tradition in American legal scholarship, has endeavoured to provide an introduction to the area for both legal and economic minds in the U. K. His chief objective is to examine the economics underlying recent British case law and legislation. To my knowledge, no comparable Canadian work is, as yet, to be found.

Quoting from O. Kahn-Freund, Professor Oliver offers a fundamental rationale for the need for lawyers to have a wider vision - one that embraces economic concepts: "...it is only when you see the law as a technique of social organization that you see the problem at all...it is the duty of the scholar to search for the social forces that make the law". But the rationale for the merger of law and economics is even more specifically rooted in the nature of the two disciplines themselves.

The fundamental roles of law and economics are inextricably linked with each other. Law attempts to decide between the competing claims of differing parties. Economics attempts to determine the optimal means of allocating resources between parties in a world where resources are limited and scarce. The link now becomes manifest: How does the judge decide between competing

claims of parties in such a way that resources are allocated in the optimal way? On what grounds will this decision be made? Furthermore, how does the legislator set down positive law so as to also ensure the optimal distribution of resources?

These are all fundamental questions which may only be answered if the student has a basic grasp of the tools of economic analysis. Providing these tools is the aim of the professor of law and economics. In light of the growing number of judicial appointments in the United States of such professors (eg. Richard Posner, Robert Bork, G. Priest, Nino Scalia, and Paul Brest, just to name a few), it seems fair to say that the merits of this combined discipline are being more and more recognized and applauded, at least south of the border.

Now the prospect of studying the economics underlying the law should not frighten away the student having little or no formal economic training. Though Professor Oliver suggests that the ideal reader should have first year economics, there is much in his book for the student whose mind is not drowning in hundreds of economic equations. Indeed, many parts are, no doubt, better understood by those with only a fundamental understanding of economics. Since this is a field which combines both economics and law, the advanced economic student often risks missing the forest for the trees.

One of the basic tenets of economic theory is that parties which possess, in all relevant respects, equal power (bargaining power, access to information,

wealth, etc.), will, in conducting their affairs, arrive at an efficient allocation of resources. This is the notion of pure competition which suggests that the optimal allocation of resources we seek is best left to the free market.

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ANNOUNCEMENTS

WOMEN IN THE LAW

There will be a meeting of Women in the Law, Wednesday at 1:00 p.m., in the Common Room. All those interested in attending the Victoria Conference please attend.

SKIT NITE MEETING!

Wanna be part of the Fame and Glory? Join us at the meeting, Wed., Jan. 12 at noon in Room 101.

GUEST SPEAKER

Me. Yves Fortier, a graduate of the Faculty and a member of the firm Ogilvy, Renaud, will speak on the subject of the future of the legal profession in Canada on Thursday, Jan 13 at 1:00 p.m.

GRADUATES' SOCIETY

The McGill Graduates' Society is seeking students interested in becoming Class Representatives for LAW '83 for their respective years -- B.C.L., LL.B., and B.C.L./LL.B. They will primarily be responsible for formulating a newsletter and organizing a class reunion in future years. Please contact your Class Presidents for further information.

Anthony Martino
Suzanne Michaud
Graduates' Class Presidents